

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20090302-0028-04-001

Ohio State Trooper Association

GRIEVANT: James P. Danaher

AND

The State of Ohio
Ohio State Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: April 19, 2010

APPEARANCES FOR THE PARTIES

Employer:
Lt. Kevin D. Miller, Ohio State Highway Patrol
Employer Advocate
Marissa Hartley, Office of Collective Bargaining

UNION:
Elaine Silveira, Ohio State Trooper Association
Union Advocate
Wayne McGlone, Chief Steward
Grievant: James P. Danaher

PROCEDURAL HISTORY

Ohio State Highway Patrol is hereinafter referred to as "Employer". Ohio State Trooper Association, OSTA, is hereinafter referred to as "Union". James P. Danaher is hereinafter referred to as "Grievant".

Grievance No. 15-03-20090302-0028-04-001 was submitted by the Union to Employer in writing on March 2, 2009 pursuant to Article 20 of the parties' collective bargaining agreement. Following unsuccessful attempts at resolving the grievance, it was referred to arbitration in accordance with Article 20, Section 20.12 of the 2006-2009 Collective Bargaining Agreement.

Pursuant to the collective bargaining agreement between the Union and Employer, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on April 19, 2010 at the Office of the Ohio State Troopers Association, Columbus, Ohio. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witness, and oral argument. The hearing was closed on April 19, 2010.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator, and submitted joint stipulations of fact.

The parties stipulated that the issues to be resolved in the instant arbitration to be: Was the Grievant issued a 1-day fine for just cause? If not, what shall the remedy be?

PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 19.01 Standard

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

Article 19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Verbal Reprimand(s) (with appropriate notation in employee's file);
2. One or more Written Reprimand(s);
3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
4. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations, which so warrant.

Article 20.11 (4) Miscellaneous

Grievances that require direct filing at Step 2 must be filed within fourteen days of the date on which any grievant covered by the grievance knew or should have had knowledge of the event giving rise to the grievance.

Work Rule 4501:2-6-02(Y) (2) Compliance to Orders

A member shall conform with, and abide by, all rules, regulations, orders, and directives established by the Superintendant for the operation and administration of the division.

BACKGROUND

On October 3, 2008, Grievant attempted to initiate a traffic stop for a speeding violation. Grievant activated his pursuit light and on two occasions pulled alongside the suspect and motioned him to stop. The suspect failed to comply and pursuit ensued. Grievant then pulled around the suspect's vehicle to slow him down and prevent him from accelerating and creating a more dangerous situation. The suspect was forced to stop with the assistance of another officer and was taken into custody without incident. Grievant acknowledged that during the course of the traffic stop, he violated several written policies of which he had knowledge.

Grievant was charged with violation of work rule 4501:2-6-02(Y)(2) Performance of Duty. The Union filed its grievance on March 2, 2009 alleging a violation of Article 19.01 Standard and 19.05. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

POSITIONS OF THE PARTIES

EMPLOYER

Employer argues that the fine letter was issued by mail on January 30, 2009, and Grievant was fined for an amount the equivalent to one day effective in pay period of February 1, 2009. The collective bargaining agreement provides that an employee shall present its grievance to the Employer within fourteen days of the date on which the grievant knew or reasonably should have knowledge of the event giving rise to the grievance. On March 2, 2009, Employer received the grievance which was signed on February 27, 2009. It is the past practice of the Employer to defend grievances which are filed within fourteen days of the receipt of the fine letter on the merits. The grievance is therefore untimely filed, and is not arbitrable.

Employer contends that there were several violations of policy and procedure related to the traffic stop of October 3, 2008 all of which were acknowledged by Grievant. Grievant had a written reprimand on his record

at the time of the incident. Grievant is a twenty five year plus veteran of the Department of Public Safety. The one-day fine is appropriate to maintain progression of discipline.

Employer requests the Arbitrator to find the grievance to be not arbitrable, and in the event that grievance is found to be arbitrable, to deny Grievance No. 15-03-20090302-0028-04-01.

UNION

Union contends that the Grievance was timely filed. Grievant had actual knowledge of the fine once his paystub of February 27, 2009 reflected that the fine was imposed. The grievance was filed within fourteen days of said date, March 2, 2009. The grievance is therefore timely filed.

Union contends that although Grievant violated written policies during this traffic stop, Grievant, a twenty five year plus trooper, acted with caution and preceded in the best interest of the public in these circumstances. Progressive discipline does not restrict the Employer from repeating lesser penalties. Grievant had to attend additional training. The training plus the fine was excessive.

Union requests the Arbitrator to grant Grievance No. 15-03-20090302-0030-04-01, and that the one day fine be reduced to a written reprimand.

DISCUSSION

Article 20.11 (4) Miscellaneous of the Collective Bargaining Agreement provides in pertinent part:

Grievances that require direct filing at Step 2 must be filed within fourteen days of the date on which any grievant covered by the grievance knew or should have had knowledge of the event giving rise to the grievance.

Disciplinary grievances require direct filing at Step 2, and are subject to the time restrictions of Article 20.11. A grievant must file within fourteen days of the date on which the grievant knew or should have had knowledge of the event giving rise to the grievance in order to protect his claim under the grievance procedure. The collective bargaining agreement further provides that "should the Grievant or Union fail to comply with the time

limits specified herein, the grievance will be considered to have been resolved in favor of the position of the Employer and that decision will be final."

On January 6, 2009, the prediscipline notice was issued to Grievant advising him that the employer intended to fine him for one day's wages for violation of Rule 4501:2-6-02 (Y)(2) Compliance to Orders. To wit: It is charged that on October 3, 2008, Grievant failed to follow the pursuit guidelines of the Division and failed to properly use the audio/video equipment. On January 30, 2009 Employer issued the fine letter by mail advising Grievant that he was fined for an amount equivalent to one workday's pay, for violation of 4501:2-6-02(Y)(2), Compliance to Orders effective in pay period February 1, 2009. Once Grievant received the fine letter he knew or should have known of the disciplinary action, the fine. The fine letter is the triggering event, and not the receipt of the paystub indicating that the fine was in fact imposed. The letter was mailed to Grievant; the mailing presumption is three days. Grievant knew or should have known on or before February 2, 2009 of the occurrence giving rise to the discipline. The time for filing the grievance thus began to run on or about February 3, 2009. There were no special circumstances presented to allow the grievance outside the provisions of the collective bargaining agreement.

In summary, Grievant untimely filed his grievance on March 2, 2009. The grievance is not arbitrable.

AWARD

Having heard and read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, Grievance No. 15-03-20090302-00 28-04-01, is not arbitrable.

Dated: April 19, 2010

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator
Steubenville, Ohio